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LEGAL AID:
A MESSAGE FROM THE LORD CHANCELLOR

"Monday, the 2nd October, sees the end of the Poor Persons Procedure under Order XVI of the Rules of the Supreme Court, and the beginning of the new Legal Aid Scheme under the Legal Aid and Advice Act, 1949.

I would like to take this opportunity of thanking all who have given their services under the old system, whether as members of Poor Persons Committees or by accepting Poor Persons' cases. That there was an unfailing supply of persons ready to give of their professional skill in this way, without charge and often at considerable expense to themselves, is something that both the legal professions can look back upon with pride.

The new Scheme is far in advance of any legal aid scheme in any other country. As you know, it has the warm support of The Law Society, to whom in consultation with the General Council of the Bar the administrative arrangements have been entrusted. The way in which this task has been tackled shows that that trust has not been misplaced, and is a happy augury for the future efficient running of the Scheme. In commending the Scheme to the legal professions, I am confident that it will receive the support from them on which its success ultimately rests."

JOWITT, C.

We are privileged to publish in this issue a message to our readers from the Lord Chancellor, the Rt. Hon. Viscount Jowitt, on the occasion of the coming into operation of the Legal Aid Scheme. A firm foundation for the Lord Chancellor's confidence in the professions' response is already evident: more than 6,000 solicitors, it was revealed by Mr. L. S. Holmes in his presidential address to The Law Society's Annual Conference at Torquay, have so far joined the scheme. They and indeed all practitioners will, in common with the general public, wish to hear the Lord Chancellor's broadcast on Legal Aid following the nine o'clock news on Monday.

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CURRENT TOPICS

Commissioners for Oaths: Increased Registration Fee

FROM 1st October the fee for registration by The Law Society of a commission authorising or appointing a commissioner for oaths is raised from £1 (at which it has stood for many years) to £2. This increase has been effected by the Commissioners for Oaths (Registration Fee) Order, 1950 (S.I. No. 1550 (L.24)), made by the Lord Chancellor with the concurrence of the Lord Chief Justice and the Master of the Rolls, under s. 71 (2) of the Solicitors Act, 1932. This change falls into line with the policy outlined by the then President of The Law Society at the special general meeting in January last (*ante*, p. 76), whereby it was sought to redistribute the burden of the cost of performance of the Society's statutory functions more equitably as between members and non-members. The Bill to which the President then referred (for the purpose of enabling an increased fee to be required on the issue of a practising certificate) was shortly afterwards introduced in the House of Lords and had its Third Reading on 28th March. Since then it appears to have made no progress, and it is not surprising to find that other sources of revenue to the Society as Registrar not requiring legislation for their increase have now come under review.

County Court Districts: Further Amendments

A NUMBER of further changes in county court districts are made, with effect from 2nd October, by the County Court Districts (Miscellaneous) (No. 2) Order, 1950 (S.I. No. 1483 (L.23)). Space does not permit all the alterations of boundaries, etc., to be mentioned here, but among the more important changes we may note that the county courts of Daventry, Northleach and Stone are discontinued and their constituent parishes are allocated to other courts; the Colchester and Clacton county court ceases to be held at Halstead; and the Woodbridge and Felixstowe county court ceases to be held at Felixstowe and is renamed the Woodbridge County Court. In addition the order transfers certain parishes from their existing county court districts to other districts. Districts affected by these changes are: Aberystwyth, Cardigan, Braintree, Bishop's Stortford, Chelmsford, Dartford, Gravesend, Shipston-on-Stour and Stow-on-the-Wold.

Call-up of Students: Further Details

FURTHER to the announcement, on 11th September, by the Ministry of Education with regard to the call-up of students planning to enter universities and technical colleges in the autumn of 1952 (*ante*, p. 602), the Ministry of Labour and National Service announced on 22nd September that the extension of the period of whole-time national service makes it impossible for young men who had intended to return to school in September, 1950, and to sit university scholarship examinations before Easter, 1951, to do so and still complete their full period of whole-time national service in time to begin their university studies, as planned, in the autumn of 1952. It has been decided, in view of the hardship involved, that such students may be released from the services on completion of not less than twenty-one months' service. Those who have been or may be granted deferment to remain at school until Christmas, and sit university scholarship examinations in December or early January, will be called up as soon as possible after they have sat the examination so that they may be released not later than mid-October, 1952. Those who wish to sit such

examinations in February or March, 1951, will be able to obtain deferment to return to school until December, 1950, and need not apply at the present time for early call-up in order to be released not later than October, 1952.

Appeals from Courts-Martial

THE MINISTER OF DEFENCE, in a Parliamentary written reply on 19th September, announced that the recommendations of the Lewis Committee on Army and Air Force Courts-Martial and the Pilcher Committee on Naval Courts-Martial, which conflict in some respects, have now been considered by the Government, and they have agreed in principle that a Courts-Martial Appeal Court should be established for all three services, and that the necessary legislation for this purpose should be prepared, with a view to the introduction of a Bill next session. This is in hand, but details remain to be settled. A fuller statement is to be made later and will cover many of the subsidiary recommendations of the committees as to the constitution and powers of the Appeal Court. Recommendations of the committees affecting courts-martial procedure are still being considered.

Innovations in the Teaching of Law

The Times recently reported some of the plans now being worked out in connection with the establishment, in two years' time, of the Southampton Faculty of Law at Oxford. Some novel features will certainly have caught the eye of legal readers of our august contemporary. For instance, a compulsory course in professional ethics is foreshadowed—the first in this country we are told, and can well believe. Scepticism as to the practicability of teaching to students not in close touch with the details of everyday legal matters a subject so impalpable is at least partly dispelled by the list of distinguished practising lawyers and judges who are to serve on the faculty advisory committee. We are left murmuring the respectful hope that something more realistic than the fabled "background course" ascribed to some American universities will result. There is, of course, a good deal of material in teachable form on the etiquette of the profession and on the duties devolving upon solicitors as officers of the Supreme Court. Comparative law, we note with satisfaction, is to be a strong feature of the curriculum, which may also teach—and here our eyebrows knit—"preventive" law. The idea behind this last-mentioned innovation, we read, is that professional and business men should consult their legal advisers at regular intervals, "as a man who takes some care of his health has a periodical examination from his doctor." We should have thought that this was something which should be taught (if at all) to clients rather than to advisers. Apart from that, a good many solicitors will agree that the long rambling consultation, ranging over ifs and ans and hypothetical transactions and causes of action, is among the least satisfactory of the sessions which they are called upon to conduct with their clients. But no doubt there are some situations in which it can be useful, and we await with interest any further details of the proposal which may be vouchsafed to us after the discussion which is due to take place on 3rd October.

CONTRIBUTION BETWEEN TORTFEASORS

BEFORE the provisions of Pt. II of the Law Reform (Married Women and Tortfeasors) Act, 1935, came into operation, it was a rule of the common law that there could be no contribution between joint tortfeasors. The rule was of uncertain origin, but it was crystallised in the judgment of Lord Kenyon in *Merryweather* v. *Nixan* (1799), 8 T.R. 186. From time to time exceptions were engrafted upon it and more than one judge criticised it adversely. Thus, in *Palmer* v. *Wick and Pulteneytown Steam Shipping Co.* [1894] 2 A.C. 318, Lord Herschell, commenting on the rule, said: "It does not appear to me to be founded on any principle of justice or equity or even of public policy."

Nevertheless the rule remained until the provisions of Pt. II of the 1935 Act came into operation. By s. 6 (1) (*c*) of the Act, where damage is suffered by any person as a result of a tort, "any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise." This last word is obviously intended to refer to the case where the tort is not joint (i.e., the same act committed by several persons) but where the same damage has been suffered by a person as a result of the independent acts of several persons. Such last-mentioned persons are not technically joint tortfeasors. The decision in *The Koursk* [1924] P. 140, shows, however, that if their independent acts resulted in one injury there was a separate cause of action against each, but there was no right of contribution as between them. Broadly speaking, therefore, the effect of s. 6 (1) (*c*) is to abrogate the rule in *Merryweather* v. *Nixan*, *supra*, and to give a right of contribution to joint tortfeasors and to independent tortfeasors liable in respect of the same damage. The amount of the contribution, it should be noted, is by subs. (2) of s. 6 "such as may be found by the court to be just and equitable," and may extend to complete indemnity.

In spite of the apparent comprehensiveness of the new provision, an examination of some of the cases dealing with the construction of the section shows that it would be unwise to assume that in every case where two or more tortfeasors are responsible for the same damage there is, even now, a right to contribution. The first of these cases is *Chant* v. *Read* [1939] 2 K.B. 346. A motor-cycle ridden by C had collided with a motor-car driven by R. R's wife, who was a passenger in the car, was killed. R, who was the administrator of his wife's estate, instituted an action against C claiming damages for her loss of expectation of life. Later C commenced a separate action against R for damages for his personal injuries and also a contribution from R under s. 6 (1) (*c*) of the 1935 Act on the ground that R, as a joint tortfeasor, was liable to pay contribution towards any damages for which C might be held liable to Mrs. R's estate. In C's action R, by his defence, alleged that that part of C's statement of claim which set up a right to contribution disclosed no cause of action, and that question was set down for hearing and disposal as a point of law before trial. The argument of counsel for the defendant R involved three propositions. In the first place he pointed out that C's claim against R rested on s. 6 (1) (*c*), and that C must, therefore, show that R was, within the meaning of that subsection, "a tortfeasor who is, or would if sued have been, liable in respect of the same damage." Secondly, he contended, in order that R might be liable in respect of the same damage, it must be shown that the cause of action was one that continued notwithstanding the death of Mrs. R. As this result could only be obtained under s. 1 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, which provides that a

cause of action vested in a person shall on his death survive for the benefit of his estate, it was necessary to inquire whether, at the time of Mrs. R's death, there was a cause of action vested in her. This led him to his third proposition which was that, at the moment of her death, there was no cause of action against her husband vested in her by reason of the provisions of s. 12 of the Married Women's Property Act, 1882. As the first two propositions were not disputed, the lengthy judgment of Hallett, J., is mostly concerned with the third proposition.

Section 12 of the Married Women's Property Act, 1882 (as amended by the Schedules to the 1935 Act), so far as material, reads as follows: " Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies . . . for the protection and security of her own property, as if she were a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort." The court did not doubt that if Mrs. R. had, at the moment of her death, a cause of action against her husband it must have been a cause of action in tort. Consequently, having regard to those words " no husband or wife shall be entitled to sue the other for a tort," it became necessary to consider whether any such cause of action constituted a civil remedy " for the protection and security of her property," so as to bring it within the substantive part of the section. The court considered at some length a series of arguments designed to show that the right to enjoy life for the full normal period is a thing of value which could rightly be described as property so that the right to claim damages for the abolition of that thing of value is a civil remedy " for the protection and security " of that property. These arguments were not accepted, however, and it was held that C's claim for contribution must fail because R was not " a tortfeasor who is, or would if sued have been, liable in respect of the same damage " as that in respect of which C might be liable to Mrs. R's administrator.

Although Hallett, J., came independently to this conclusion, he quoted with approval an earlier decision of McCardie, J., in *Gottliffe* v. *Edelston* [1930] 2 K.B. 378. In that case an unmarried woman sustained injuries through a man's negligent driving and issued a writ against him claiming damages in respect thereof, but before the trial of the action she married him. It was held that the action was not an action for the protection and security of the wife's separate property and the claim was therefore barred by the prohibitory words of s. 12 of the Married Women's Property Act, 1882. The effect, therefore, of the two decisions taken together is that, if a married woman suffers injury caused by the negligence of her husband and a third party, in any action by her (or if she is dead, by her personal representatives) against the third party he cannot claim contribution from her husband.

Two more recent cases illustrate other circumstances in which a tortfeasor may find that he has no right of contribution against another tortfeasor responsible for the same damage. In *Merlihan* v. *A. C. Pope, Ltd., and J. W. Hibbert, Pagnello (Third Party)* [1946] K.B. 166, the plaintiff sued the first and second defendants for damages for personal injuries which he sustained when the first defendants' motor van, driven by their employee the second defendant, collided with a Canadian War Department motor truck in which the plaintiff was travelling as a passenger. The collision occurred on the 15th March, 1943, and the writ against the two defendants was issued on the 17th May, 1944. On the 15th May, 1945, the defendants obtained an order joining Pagnello, the driver of the Canadian motor truck, as a third party. On the 14th June, 1945, Birkett, J., gave judgment in favour of the plaintiff and awarded him £300 damages against the defendants. The decision on the third party claim was postponed to the 29th June, when, after finding that the third party Pagnello, equally with the defendants, was guilty of negligence contributing to the collision, the judge proceeded to consider the third party's contention that he was not liable to contribute on the ground that the claim to contribution was barred by s. 21 (1) of the Limitation Act, 1939, which it was conceded applied to him. As in *Chant* v. *Read, supra*, s. 6 (1) (*c*) of the 1935 Act was in point. The third party contended that, as the third-party notice was taken out in March, 1945, and the order made on the 15th May, 1945, both dates being beyond the twelve months' period of limitation mentioned in s. 21 of the Limitation Act, 1939, he was not a " tortfeasor who is, or would if sued have been, liable in respect of the same damage." The defendants, on the other hand, claimed that their cause of action against him did not accrue until their own liability had been established by the judgment of the court on the 14th June, 1945, and was not therefore barred by lapse of time. The court accepted the third party's contention on the express ground that he was protected by the Limitation Act, 1939, because the cause of action in fact accrued on the 15th March, 1943, the date of the collision.

It appears, however, that even if the decision in *Merlihan* v. *A. C. Pope, Ltd.*, is right, there is a procedure available to a potential defendant who wishes to claim contribution from a joint tortfeasor by which he can virtually prevent time from running under s. 21 of the Limitation Act, 1939. This procedure was explored in *Hordern-Richmond, Ltd.* v. *Duncan* [1947] K.B. 545, where the facts were very similar to those in the *Merlihan* case. As a result of a collision between the plaintiffs' motor lorry and an army lorry driven by the defendant, a sergeant in the army, four soldiers travelling in the army lorry were injured. Up to the time of the hearing, however, none of these had made any claim or instituted any proceedings against the plaintiffs or the defendant. The plaintiffs feared that, if any of these passengers commenced proceedings later and obtained judgment against them, the plaintiffs might, as a result of the *Merlihan* case, be debarred from obtaining contribution from the defendant by reason of s. 21 of the Limitation Act, 1939. They therefore, within one year from the date of the accident, themselves issued a writ against the defendant claiming a declaration that in the event of any proceedings for damages being instituted against them in respect of the accident they should be entitled to claim indemnity or contribution against the present defendant, pursuant to s. 6 of the 1935 Act, in respect of any damages or costs that might be awarded against them. Cassels, J., quoted at length from the judgment in the *Merlihan* case, and said that, if it had not been for that decision, it might well have been that no such application would have been made. He himself doubted the decision in that case and took the view that the Limitation Act starts to run in favour of a third party in such cases as these only when the defendant has been made liable for the damages. The cause of action which brings a plaintiff and a defendant before the court in such a case as may arise out of an accident is negligence; the cause of action which entitles a defendant to bring a third party before the court is the liability of the third party to make contribution, and that cause of action does not arise until the liability of the defendant has been ascertained. Nevertheless, although that was the view held by Cassels, J., he added that he had no means of knowing whether the judge who might try this case, if it should ever be brought to trial,

would subscribe to the decision of Birkett, J., in the *Merlihan* case or would say that the point did not prevail in favour of the third party. Unless, he added, the Legislature interfered, this position was bound to be faced in any case arising out of negligence where a plaintiff forbore for more than twelve months to sue one of the parties responsible and the other party alleged to be responsible was entitled to the protection of the Limitation Act. He therefore granted the declaration, so that the matter might be at any rate available for ventilation before the judge who might try the subsequent case and so that the present plaintiffs might be able to plead before him that, within the twelve months' period, they had brought before the court the person from whom they sought contribution and that court had declared that the plaintiffs were entitled to bring him in.

Although Cassels, J., suggested that the Legislature might interfere to clarify the position, it is obvious that in the meantime a potential defendant in these circumstances, even if he thinks that the *Merlihan* case was wrongly decided, will be well advised to issue, within twelve months of the accident, a writ against the person from whom he would require contribution claiming a declaration of the kind made in *Hordern-Richmond, Ltd.* v. *Duncan.*

H. R.

PRE-CONTRACT ENQUIRIES AND THE PLANNING ACTS—I

ENQUIRIES OF LOCAL AUTHORITIES

In this and a later article the scope of pre-contract enquiries of local authorities and preliminary enquiries of the vendor's solicitor is examined in relation to some considerations arising under the Town and Country Planning Act, 1947 ("the Planning Act") and the National Parks and Access to the Countryside Act, 1949 ("the Parks Act"). References to the "Minister" mean the Minister of Town and Country Planning.

So far as enquiries of local authorities are concerned, the familiar forms of enquiry agreed between The Law Society and the various local government associations, which are designed to accompany the requisition for an official search in the local land charges register, incorporate a number of questions rendered necessary by the Town and Country Planning Act, 1947. As is pointed out later in this article, however, certain of the printed enquiries do not appear to cover the case where the local planning authority, as defined by the Planning Act, has delegated its powers to a district council. As is well known, the county and county borough councils are now the local planning authorities, unless the Minister has set up a joint planning board (s. 4 (1) and (2) of the Planning Act), and in the case of the average purchase the appropriate forms are sent to the county council and to the borough or district council concerned.

Since the present forms were agreed, moreover, the Parks Act has been passed, and although it will be appreciated that the surveys instituted under it are only in their early stages as yet, and that some of the questions suggested below may for the time being need to be modified accordingly, it is not too soon for solicitors to consider whether any, and if so what, further enquiries are made necessary by the new Act. In so doing, regard must, of course, be had to the type of property in question, and in doubtful cases it may be necessary to insert some omnibus questions with general reference to the Act.

The future of enquiries of local authorities is dependent upon the outcome of the deliberations of the Departmental Committee now considering local land charges generally, and it appears improbable that the existing forms of enquiry—which were only settled after prolonged negotiations—will be revised in the near future. The suggestions which follow, therefore, are made in the hope that they will assist solicitors to adapt the present printed forms to cover matters arising under the Parks Act and to avoid certain difficulties now apparent respecting enquiries under the Planning Act. Suggested additional questions for these purposes are set out fully in the summary at the end of this article.

(i) Enquiries of County Councils

National Survey of Rights of Way

Under s. 27 of the National Parks and Access to the Countryside Act, 1949, which came into force on the 16th December, 1949, every county council in England and Wales must within three years of that date carry out a survey of all lands in their area over which any right of way is alleged to subsist, and the results must be incorporated into a ***draft map and statement*** showing public footpaths and bridleways where they exist or are alleged to do so.

In carrying out the survey the county council must consult with county district and parish councils. Section 29 of the Parks Act deals with the making of representations and objections by aggrieved owners, first to the surveying authority, and ultimately to the Minister.

Following the final decision, *provisional maps and statements* are prepared under s. 30.

Section 31 of the Parks Act provides that the aggrieved owner may then apply to quarter sessions for a declaration—

(*a*) that there is no right of way;

(*b*) that the right of way is incorrectly defined;

(*c*) that the position or width of the right of way is as specified in the application and not as indicated in the provisional map and statement;

(*d*) that it is not unconditional but subject to specified limitations or conditions or subject to conditions further or other than stated by the authority.

It follows that in the enquiries of county councils (Form Con. 29B) with reference to a country property it might be necessary to include some such enquiry as Nos. 13, 14 and 15 in the summary below.

Under s. 36 of the Parks Act if all the county councils concerned approve, their survey functions under the sections quoted above can be delegated to the appropriate joint planning board. Accordingly in appropriate cases question No. 16 should be added to the enquiries of county councils.

Under s. 41 of the Parks Act the county council can apply to the Minister to have vested in itself those powers of the creation of rights of way by agreement (under s. 39) or compulsorily (under s. 40) which are under the Act normally vested in the county district councils and which are dealt with later. An appropriate question would therefore be No. 17, below.

National Survey with regard to the Provision of Public Access to Open Country

The Parks Act also provides for public access to open country for open-air recreation.

Under s. 61 of the Parks Act, every *local planning authority* must carry out a survey within two years to decide what access agreements or orders should be made. In this instance the expression "local planning authority" does not include the L.C.C. or a county borough, or a joint planning board so far as it affects land within a county borough. County borough councils or joint planning boards, however, can by resolution undertake this obligation, or the Minister can make an order to that effect. If after the local planning authority have completed their review they decide that no action is to be taken, they must, under s. 62, report to the Minister and give public notice thereof. Representations can then be made, whereupon the Minister must hold a local enquiry, after which he must make his decision. (Access agreements or orders can, nevertheless, be made before the completion of the local planning authority's review.)

If, however, it is decided that some action is necessary, then under s. 63 of the Parks Act the local planning authority must, within one year from the completion of their review, forward a map to the Minister showing the areas to which the public have been given access or to which it is proposed that access shall be provided. Public notice must be given as to where the map can be inspected.

Again representations can be made and a local enquiry held, after which the Minister must make his final decision.

Access Agreements and Access Orders

Under s. 64 of the Parks Act the local planning authority can make *access agreements* with the owners of land, and under s. 65 the local planning authority can make *access orders*; in the latter case, however, the Minister's confirmation must first be obtained.

The effect of the making of an access agreement or an access order is that no work can be carried out on any land subject to such an agreement or order so as to reduce substantially the area to which the public have access by virtue thereof (s. 66 of the Parks Act).

An access agreement or order can make provisions for securing that sufficient means of access to the land will be available for the public.

The Act specifies the arrangements which can be so made, as follows:—

(*a*) The improvement or repair of any means of access.

(*b*) The construction of new means of access.

(*c*) The restricting of any alteration or stopping up of a means of access.

(*d*) The maintenance of any pre-existing or new means of access.

The local planning authority can come to an arrangement with the owner of the land for the provision of means of access as above and can contribute to the cost if the work is done by the owner. If the authority fail to come to an agreement with the owner, or if he defaults on his part of the agreement, the local planning authority have compulsory powers under this section enabling them to do the work themselves and (if the owner had agreed to do it himself) the local planning authority can recover the amount of the cost from the owner, less such proportion as they had already agreed they would pay (s. 67 of the Parks Act).

If the county council is the local planning authority questions 18 and 19, below, may be appropriate.

(ii) Enquiries of Borough or District Councils

This form (Con. 29A) goes far to meet the situation arising when highway and planning powers have been delegated by the county council as indicated above. If, however, the county council has replied in answer to questions 10 and 11 of Form Con. 29B (which has been submitted as printed), that its powers as planning authority have been delegated to the appropriate county district council, to whom such questions should be addressed, fresh enquiry as to these matters must then be made of such district council. Much delay often ensues if the enquiring solicitor is thus referred to the district council and has to repeat certain county council enquiries to the district council.

To avoid the frequent delay thus caused, fresh questions, numbered 13 and 14 below, should be added to the enquiries of borough or district councils (Form Con. 29A).

If this is done there will be no possibility of a county council's negative reply causing the solicitor acting for the purchaser (who is probably anxious to exchange contracts) to fume at the prospect of several days' delay!

Public Path Agreements

Under s. 39 of the Parks Act, a county borough or county district council can enter into an agreement with an owner of land for the dedication by him of a footpath or bridleway over his land: this includes arrangements for widening or extending such a path or way. Such an agreement is termed by the Act a *public path agreement.*

It is therefore clear that in the case of a country property it may be necessary to enquire of the local authority, and accordingly a further question on the lines of No. 15, below, should be added.

Public Path Orders

Under s. 40 of the Parks Act a county borough or county district council has compulsory powers of creating public rights of way on foot only or on foot and on horseback. Accordingly question No. 16, below, should be added.

As under s. 103 of the Parks Act the county council (or the county borough council) may have delegated its planning powers under Pt. V of the Act to a district council, Nos. 17 and 18, below, may be asked.

(iii) Enquiries of County Borough Councils

In the case of a county borough council being the local planning authority and highway authority, then to the form of enquiries prescribed (Con. 29C) should be added new questions which are No. 13 (No. 10 on the county council form), 14 (county council's No. 11) and 15 (county council's No. 12). In these cases, of course, for "county council" in the questions substitute "county borough council." If a country area, it may also be necessary to add a question No. 16 (borough and district councils' No. 15) and No. 17 (borough and district councils' No. 16). These are mentioned in the summary below. Finally, where the county borough council are the local planning authority, questions 18 and 19, below, may also be asked.

Summary of Additional Questions Suggested

(i) *County Councils* (Con. 29B)

(*In questions* 13–19 *references to "the Act" shall be construed as referring to the National Parks and Access to the Countryside Act,* 1949.)

13. What is the position regarding the property, under the National Parks and Access to the Countryside Act, 1949, with regard to—

(*a*) the making of the footpaths, etc., survey and the draft map and statement under s. 27 and any entries thereon?

(*b*) the making of any representations and objections as provided for in s. 29?

(*c*) the making of a provisional map and statement under s. 30 and any entries thereon?

14. Have any, and if so what, applications been made to quarter sessions under s. 31 of the Act, and with what result?

15. Are there any, and if so what, entries on the definitive map and statement referred to in s. 32? (A plan is enclosed for the recording thereon of relevant information and return to us.)

16. If the council's functions as a surveying authority under Pt. IV of the Act have been delegated to a joint planning board, please state the name and address of the latter authority.

17. If powers of creating public rights of way by agreement under s. 39 or compulsorily under s. 40 of the Act have been vested in the council—

(*a*) has any agreement been made, or is the making of such an agreement contemplated, by the council under s. 39 of the Act affecting the property? If so, full particulars should please be given;

(*b*) has the council exercised, or does it contemplate exercising, or is there any proposal that it should exercise, its compulsory powers of creating public rights of way under s. 40 of the Act, so as to affect the property? If so, particulars of any such public path order, or proposed order, should please be given.

18. What is the position, regarding the property, under the Act with regard to the making of—

(*a*) the access to open spaces survey under s. 61?
(*b*) any representations and decisions under s. 62?
(*c*) the map showing access areas under s. 63?
(*d*) any representations and any decisions under s. 63?

19. Have any, and if so what, access agreements under s. 64 or access orders under s. 65 been made, or are any contemplated affecting the property?

(ii) *Borough and District Councils* (Con. 29A)

13. If the register under the Town and Country Planning (Control of Advertisements) Regulations, 1948, is maintained by the (borough or district) council, are there any, and if so what, entries relating to the property in such register?

14. If the necessary powers have been delegated to the council, have the council made any order or passed any resolution for the making of an order under ss. 21, 23, 26, 28, 29 or 33 of the Town and Country Planning Act, 1947, in relation to the property?

(*In questions* 15–18 *references to "the Act" shall be construed as referring to the National Parks and Access to the Countryside Act*, 1949.)

15. Have any public path agreements been made, or is the making of such an agreement contemplated, by the council under s. 39 of the National Parks and Access to the Countryside Act, 1949, affecting the property? If so, full particulars should please be given.

16. Has the council exercised, or does it contemplate exercising, or is there any proposal that it should exercise, its compulsory powers of creating public rights of way under s. 40 of the Act so as to affect the property? If so, full particulars should please be given.

17. If the necessary powers have been delegated to the council, what is the position affecting the property under the Act with regard to the making of—

(*a*) the access to open spaces survey under s. 61?
(*b*) any representations and any decisions under s. 62?
(*c*) the map showing access areas under s. 63?
(*d*) any representations and any decisions under s. 63?

18. Have any, and if so what, access agreements under s. 64 or access orders under s. 65 been made affecting the property?

(iii) *County Borough Councils* (Con. 29C)

13. [County Council's No. 10.]
14. [County Council's No. 11.]
15. [County Council's No. 12.]
16. [Borough and District Councils' No. 15.]
17. [Borough and District Councils' No. 16.]

18. Have the council adopted the provisions of s. 61 of the National Parks and Access to the Countryside Act, 1949? If so, what is the position with regard to the making of—

(*a*) the access to open spaces survey under s. 61?
(*b*) any representations and any decisions under s. 62?
(*c*) the map showing access areas under s. 63?
(*d*) any representations and any decisions under s. 63?

19. Have any, and if so what, access agreements under s. 64 or access orders under s. 65 of the National Parks and Access to the Countryside Act, 1949, been made affecting the property?

G. D. W. C.

A Conveyancer's Diary

BEQUESTS TO NATIONALISED HOSPITALS AGAIN—IV

In *Re Frere* [1950] 2 All E.R. 513, the testator, who died in 1941, by his will bequeathed a number of legacies to hospitals "if still at [his] death run on a voluntary system and not taken over by the State." Among these legacies was a legacy of £6,000 to the X Hospital for certain specific purposes. After directing the payment of these legacies, and also numerous other legacies, the testator gave the balance of the residue of his estate to the X Hospital "for endowment purposes."

Two questions arose on this will, the first being whether the condition attached to the gift of £6,000 to the X Hospital attached also, by implication, to the residuary gift in favour of the same hospital. It was admitted that this condition, so far as it affected the gift of £6,000, had come into operation and that that gift did not take effect. Wynn Parry, J., felt himself driven "with considerable reluctance" to the conclusion that he could not find a sufficient justification to import into the residuary bequest by necessary implication the condition earlier in the will imposed on the particular gift to the X Hospital. The learned judge's reluctance was due to the extraordinary result which had to follow this construction of the will, whereby "the very institution which in the earlier part of the will is deprived of the limited legacy of £6,000 by the operation of the condition, obtains, under the residuary gift, not only £6,000 but any balance of the residue." The result of this decision on the first question in this case, therefore, is that for the purposes of the other (and from the point of view with which these articles are concerned, the more pertinent) question the condition attached to the pecuniary legacy to the X Hospital may be totally disregarded.

This other question arose in this way. The gift of the balance of the residue was "for endowment purposes," that is, it was a gift of a capital sum on trust to invest and apply the income in perpetuity. Such a gift is void, on well-known principles, unless the objects for which the income is to be

applied are charitable objects, and the specific question which thus had to be considered in this case was whether the X Hospital had ceased to be a charity as the result of the coming into operation of the National Health Service Act, 1946. The actual decision on this point I referred to last week; it was that the hospital had not so ceased to be a charity. But it is interesting to consider for a moment how this decision was reached.

First the learned judge referred to the provisions of s. 59 (1) of the Act (which empowers regional hospital boards, boards of governors of teaching hospitals and hospital management committees "to accept, hold and administer any property upon trust for purposes relating to hospital services" or to research), and to those of s. 59 (2), which relax the effect of the law relating to mortmain in relation to purchases of land by any such board or committee. Then followed a reference to *Re Morgan's Will Trusts* [1950] 1 All E.R. 1097; 94 SOL. J. 368, and finally to *Re Dean's Will Trusts* [1950] 1 All E.R. 882, in which (the learned judge concluded) Harman, J., had, in effect, held that a hospital did not cease to be a charity merely because of the coming into effect of the Act. Now in the latter case there had been a gift by will to a nationalised hospital for the purposes of that hospital, to be applied for the purpose of providing accommodation for the use of relatives of patients critically ill, and in his judgment upholding the validity of this gift as a gift for a good charitable purpose Harman, J., had observed that, if and so far as the purpose of providing such accommodation was a purpose of the hospital, there was no difficulty, because the purposes of the hospital generally were admittedly charitable purposes. Whether this was a reference to an admission made in argument or an application to the particular case before him of a principle implicit in an earlier decision on the Act (i.e., the decision of the Court of Appeal in *Re Kellner's Will Trusts* [1950] Ch. 46) is not clear; but it would appear that the point was not argued before Harman, J., in *Re Dean's Will Trusts*, and that the decision in *Re Frere* to the effect that a hospital does not lose its status as a charity merely because of the effect of the National Health Service Act, 1946, upon it, rests, to the extent that it rests on earlier decisions at all, on *Re Morgan's Will Trusts*.

However, the effect of the decision is more important than the way it was arrived at. I have already had occasion to refer to one of its results (see p. 609, *ante*). Another consequence will be to settle the doubts felt by trustees who hold funds upon trust for distribution among charitable institutions to be selected at their discretion as to whether they may properly make payments to nationalised hospitals without committing a breach of trust. The uncertainty on this point has now been completely removed.

Finally, to round off this review of recent decisions on the Act as it affects gifts or trusts of property to or for hospitals, some mention must be made of *Ministry of Health* v. *Fox* [1950] 1 All E.R. 1050. The circumstances in this case were rather specialised, and the facts which are really relevant to the decision require a little disentangling before they can be discovered, but, put very shortly, what happened was this. Before the appointed day trustees held certain land on which a maternity home had been erected and they had control of the land and the buildings thereon. Under the trust they were empowered, amongst other things, to sell or mortgage the land and to apply any moneys arising from an exercise of those powers either for the general purposes of the maternity home or for such other public charitable purpose as they should think fit. The trustees also held certain investments as an endowment fund for the maternity home, and the deed regulating the trusts upon which this fund was held provided (amongst other things) that the income of the fund should be used for various purposes connected with the maternity home and empowered the trustees, if they should so think fit, to sell the investments representing the fund and to apply the proceeds of sale for such other charitable trust as they should think fit. Both the realty held by the trustees and the endowment fund were, therefore, held on dual trusts, which enabled the trustees to apply the property vested in them, broadly speaking, either for the purposes of the maternity home or for such other charitable purposes as they should select.

This was the position in law on the appointed day under the Act, but immediately before that day the trustees were in fact administering the buildings erected on the land held by them as a maternity home, and using the endowment funds for the purposes of the home. In these circumstances the Ministry of Health claimed a declaration that the trustees' interests in the land held by the trustees and the investments comprising the endowment fund were transferred to the Minister under ss. 6 (1) and 7 (4), respectively, of the Act.

By s. 6 (1), it will be recalled, there were transferred to the Minister on the appointed day "all interests in . . . premises forming part of a voluntary hospital . . . being interests held immediately before the appointed day . . . solely for the purposes of that hospital . . .," and by s. 7 (4) there were similarly transferred "all endowments of a [nationalised] hospital . . . held immediately before the appointed day" (with an immaterial exception in the case of teaching hospitals). Section 7 (10) defines "endowment" as meaning property held solely for the purposes of the hospital in question. The point for decision, therefore, was whether it could be said of the land and the investments in this case that they were held, respectively, solely for the purposes of the maternity home immediately before the appointed day when they were held upon trusts which empowered the trustees, at their discretion, to select other charitable purposes and apply the property in their hands for those purposes. Wynn Parry, J., approached the question before him from a factual point of view, and held that as the property in question had, in fact, immediately before the appointed day been held by the trustees for the purposes with which they were then concerned, i.e., the purposes of the maternity home, it had been transferred to the Minister under the Act.

This decision has not met with universal approval among those familiar with the sort of question it dealt with, but that is by the way, and I have only included the case in this review of recent decisions for the sake of completeness, and with the negative object of showing that, to those concerned to find an answer to what I still consider to be the most difficult of all the problems with which the passage of the Act has confronted the conveyancer, the case can afford no assistance at all. The problem I have in mind in writing these words is, of course, the validity of a gift to a nationalised hospital made by a will dated before the appointed day of a testator dying after the appointed day—a problem which, I think, is still open.

"A B C"

Mr. B. R. W. GOFTON, clerk and solicitor to Eston Urban District Council, has been appointed clerk and solicitor to Havant and Waterloo Urban District Council.

Mr. R. M. TOMSON, senior assistant solicitor with Blackburn County Borough Council, has been appointed assistant to the secretary of the Manchester Ship Canal Company.

Landlord and Tenant Notebook

CONTROL BY ATTORNMENT

We are indebted to the perspicacity of a Chancery master for the latest authority on the position, as regards rent control, which may result from an attornment by a mortgagor. The new decision, *Portman Building Society* v. *Young* [1950] 2 All E.R. 443, also produced some judicial observations which building societies and other mortgagees may well take to heart; a full discussion of this aspect was given in the "Conveyancer's Diary" on 26th August (94 Sol. J. 548). In this article the main question to be examined will be whether an attornment clause creates a landlord-and-tenant relationship for all purposes.

The facts were that in 1948 the defendant had mortgaged his dwelling-house to the plaintiffs on their advancing him £1,600 on the security of the property in question. A clause in the mortgage deed then provided that he attorned tenant to them of such part of the property as he did or should occupy at a yearly rent of 1s. if demanded, but that they could determine *the tenancy* by three days' notice once their power of entry into possession or into receipt of rents and profits became exercisable under other provisions. If that did create a tenancy of a dwelling-house let as a separate dwelling, etc., such tenancy would be outside the Rent, etc., Restrictions Acts because the rent would be less than two-thirds of the rateable value (s. 12 (7) of the Act of 1920). But in April, 1949, the parties entered into a deed of variation by which the amounts payable were made monthly payments of £9 16s. (which exceeded two-thirds of the rateable value) and the mortgagor attorned *tenant* at the monthly *rent* of £9 16s.; such rent was to be applied in or towards satisfaction of instalments payable monthly, and the defendants might at any time without previous notice *determine the tenancy* created by such attornment.

The form taken by the proceedings was an originating summons in which the plaintiffs claimed possession as mortgagees. The defendant did not appear and all went well till the master raised the objection that the defendant was entitled to the protection of the Rent, etc., Restrictions Acts. The matter then came before Danckwerts, J., and two arguments were advanced for the plaintiffs.

The first was that the Acts had a code of their own for mortgages. The suggestion was that, this being so, questions between mortgagor and mortgagee should be regulated by that code, to the exclusion of the provisions which concerned tenants. The second contention was that the words in the Rent Acts were used in their popular sense and had no application to an attornment clause, which was a pure technicality, not intended to create the relationship of landlord and tenant; the defendant was a mortgaging owner, not a tenant. This was supported by reference to "certain authorities" from which it appeared that courts had treated payments differently according to whether they were, in the proper sense of the word, rent or not.

Support may have been found for the "popular sense" point in such authorities as *Baker* v. *Lewis* [1947] K.B. 186 (C.A.), in which it was held that "purchasing" in the phrase "the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house . . .) for occupation as a residence," etc., in the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*h*), must be given its "ordinary" meaning. "I am well aware that the word 'purchaser' and the words 'by purchase' have in certain contexts a technical meaning which is well known to all lawyers, but I am not aware of any case in which the words 'by purchasing the dwelling-house' have been given any technical meaning," said Morton, L.J. One result of this decision, which was in keeping with the objects of the Acts in so far as they protect a tenant when the house has been "sold over his head" (a "popular" expression actually used in Scott, L.J.'s judgment in *Epps* v. *Rothnie* [1945] K.B. 562 (C.A.)), was that in *Powell* v. *Cleland* [1948] 1 K.B. 262 (C.A.), a tenant was unable to avail himself of the exception when his original landlord granted the plaintiff a concurrent lease.

The "certain authorities" are not named in judgment or report, but I imagine that they included *Re Bowes; ex parte Jackson* (1880), 14 Ch. D. 725 (C.A.), a bankruptcy case in which the debtor, owing his bankers some £7,000 odd, had mortgaged property to them and attorned tenant, as tenant from year to year, at an annual rent of £8,000, the bank having a right to determine the tenancy by one week's notice in the event of default. The court held that a distress levied was invalid against the trustee in bankruptcy, the attornment clause being in fraud of the bankruptcy law. The benefit to be derived from the attornment clause usually inserted in a mortgage deed was, according to Baggalay, L.J., intended to be an equivalent for that which the mortgagee would derive from the rent if he were a stranger; if the rent reserved was clearly in excess of what would be a fair and reasonable rent, it appeared to the learned lord justice that though you might call it rent it was no longer a real rent, but a fictitious payment under the name of rent. Mention may also have been made of *Re Knight; ex parte Isherwood* (1882), 22 Ch. D. 384 (C.A.), in which Jessel, M.R., in considering terms to be imposed on giving leave to a trustee in bankruptcy to disclaim a tenancy created by an attornment clause, said: "In the first place, the relation between the parties is not the ordinary one of landlord and tenant, but it is the ordinary relation of mortgagee and mortgagor," and pointed out that in equity, the mortgagor being roughly speaking the owner of the estate, the rent reserved was money paid on account of principal and interest.

The definitions of "landlord" and "tenant" were also relied upon by counsel for the plaintiffs, but can hardly have been in the forefront of his arguments; strictly speaking, they are not definitions but merely declarations that the expressions include certain persons with derivative interests.

The learned judge rejected all these contentions, pointing out (and no doubt the *contra proferentem* rule had something to do with it) that the plaintiffs had inserted the clause and had used the words "tenancy" and "rent"; they had repeatedly used expressions which showed that a tenancy was created and a rent was to be paid. The arrears were such, however, that a twenty-one days' order was granted; only, in view no doubt of the Increase of Rent, etc., Restrictions Act, 1920, s. 17 (2), the learned judge held that he had no power to award the plaintiffs costs.

In taking the point the master was, of course, acting perfectly correctly; as regards security of tenure, the Acts fetter the court rather than the landlord ("No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply . . . shall be made or given unless": Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)), as was first pointed out in *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.). But the High Court has

not the equivalent of the Increase of Rent, etc. (Restrictions) Rules, 1920, r. 18 ("The court shall, before making an order . . . satisfy itself that such order may properly be made, regard being had to the provisions of the Act") to remind it of its limitations; and it was because it had never occurred to the plaintiffs that the Acts would apply that they had failed to adopt or adapt the suggestion made by Denning, J. (as he then was), in *Smith* v. *Poulter* [1947] K.B. 339: "In actions in the High Court for possession of a dwelling-house, the indorsement of the writ should state either the reason why the house is not within the Rent Restrictions Acts or, if it is within those Acts, what is the ground on which possession is sought."

R. B.

HERE AND THERE

PART-TIME MAGICIAN

IF he will cause the current number of *Lilliput* to be delivered at his chambers in Stone Buildings, the Director of Legal Studies will find at p. 15 something which should arouse both his interest and his curiosity, if it does not actually send a cold shiver down his spine. In the course of his unwearied researches into the byways of London life, the ingenious Lemuel Gulliver has contacted and interviewed a practising witch-doctor, a part-time practitioner, that is, for it seems that by day his talents are devoted to the study of the English law. Doubtless, since the enlightened legislators of 1736 derestricted witchcraft, removing it from the criminal code, there is no actual incompatibility between the two occupations, nor in the regulations of either The Law Society or the Inns of Court does the profession of witch-doctor figure as a prohibited calling. What perhaps is of more immediate interest to those concerned in legal education is that charms for success in examinations come within his competence. Although the gentleman's qualification is one in African Ju Ju his prescriptions in general and this one in particular are very similar in conception and line of thought to the recipes of the three Scottish consultants to whom Macbeth had such good reason to be beholden.

PASS BY CHARM

YOU want to pass your examination with flying colours? Here are the chief ingredients. A cat's eye, a tortoise's tail and some of the sacred perfume of the kind used by the Haussa people in Nigeria. "De cat's eye an' de tortoise tail are ground up together into a powder. De perfume is den added, making a kind ob paste. Dis paste de student puts into a bottle ob ink which he takes wid him into de examination room." A fountain pen is not recommended because the paste might clog it. The night before the examination the student must sacrifice a dove. In the austerely restricted conditions of post-war London life, a utility sacrifice of a pigeon will meet the case. The candidate must cut the bird's throat, dip his finger in its blood and smear his forehead. In Africa he would then bury it at the cross-roads. "In London dat is not so practical, so I tell him to t'row de bird into de ribber. De gods will get it just de same." Finally there is the incantation to be uttered on entering the examination room but that (apart from being unintelligible) is secret. The fee, calculated on cut-price principles, since the finances of most students are very limited, is two pounds. There you have it. So what are the reactions of the legal educational and welfare authorities? Will they adopt a sort of *Gilmour* v. *Coats* attitude, carrying over to the black arts, by a sort of application of the *ejusdem generis* rule, the solid sensible agnosticism towards things not proven by legal evidence that the House of Lords adopted last year when faced with the unfamiliar problems of intercessory prayer and the contemplative life? Will the cat's eye and the tortoise's tail be written off as a harmless subjective stimulus to morale, like, say, sucking bull's eyes, or will they take no chances with the dark gods of the jungle, the genii stoppered up in the harmless necessary ink-bottle? Will an indignant cry of "witch hunt!" go up if the invigilators institute a customs probe of imported inkpots and check for blood stains on the brow?

AFRICAN PROBLEM

THE problem of the African student is both acute and delicate. As if the language difficulty were not stern enough already the Inns of Court, to which most of the legal aspirants gravitate, require also a Latin qualification. Fortunately they tend to be blessed with phenomenal memories, though even that can be a mixed blessing. I am told that once a student, having diligently applied himself to a chunk of the Georgics which formed part of the syllabus, got the wrong clue in the first line of the passage he was required to construe and produced an impeccable translation of another passage a couple of hundred lines further on. The charm must have slipped on that day. But outside the examination room there is the perpetual peril of isolation. London is a hard place for the stranger to find contacts but in the case of the coloured student it is all too likely that he will fall in with kind but perhaps not precisely ingenuous friends to undertake his elementary political education. When he goes home he may not know Marx from Spencer but (if they have succeeded) he will hardly be an element of stability.

RICHARD ROE.

BOOKS RECEIVED

Spicer and Pegler's Income Tax and Profits Tax. Nineteenth Edition, by H. A. R. J. WILSON, F.C.A., F.S.A.A. 1950. pp. xxxv, 12 (supplement) and (with index) 760. London: H. F. L. (Publishers), Ltd. 27s. 6d. net.

Industrial Injuries. "This is the Law" Series. By H. SAMUELS, M.A., of the Middle Temple and Northern Circuit, Barrister-at-Law, and ROBERT S. W. POLLARD, Solicitor of the Supreme Court. Second Edition. 1950. pp. viii and (with Index) 104. London: Stevens & Sons, Ltd. 4s. net.

A Manual of International Law. By GEORG SCHWARZENBERGER, Ph.D., Dr.Jur., Reader in International Law in the University of London, Vice-Dean of the Faculty of Laws, University College, London. Second Edition. 1950. pp. lii and (with Index) 428. London: Stevens & Sons, Ltd. 25s. net.

The Patents Act, 1949. With a Commentary by the Chartered Institute of Patent Agents. 1950. pp. vii and (with Index) 327. London: Sweet & Maxwell, Ltd. 37s. 6d. net.

Konstam's Income Tax. Eleventh Edition. Release No. 2: 28th July, 1950. London: Stevens & Sons, Ltd.; Sweet and Maxwell, Ltd.

Skinner's Property Share Annual, 1950-51. pp. (with Index) 304. London: Thomas Skinner & Co. (Publishers), Ltd. 30s. net.

The Law of Advertising. By W. J. LEAPER, of the Inner Temple, Barrister-at-Law, Assistant General Secretary of the Advertising Association. 1950. pp. xxiii, 334 and (index) 37. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

REVIEWS

Michael and Will on the Law relating to Water. Ninth Edition. By H. R. McDOWELL, LL.B., Solicitor and Parliamentary Officer to the Metropolitan Water Board, and C. F. CHAMBERLAIN, of the Middle Temple, Barrister-at-Law. 1950. London: Butterworth & Co. (Publishers), Ltd. £6 6s. net.

This new edition of one of the standard works on water supply maintains the reputation of its predecessors and can be recommended to anyone concerned with the law of water supply.

Michael and Will deals with the new law, the Water Acts, 1945 and 1948, by setting out the text of the Acts and providing annotations and notes to the sections. These notes refer the reader in many instances to the cases decided under the old law contained in the Waterworks Clauses Acts, 1847 and 1863, for although these Acts are dying, they are not yet dead. The discussion of case law is full and lucid.

Besides the Water Acts, 1945 and 1948, the Rural Water Supplies Act, 1944, and the Public Health Acts, there are numerous statutory provisions relating to water which are included by the editors in this edition, who have borne in mind that many water engineers who need a knowledge of water law have no extensive law library. Thus relevant parts of the Town and Country Planning Act, 1947, the River Boards Act, 1948, the Acquisition of Land (Authorisation Procedure) Act, 1946, and many other Acts have been included so far as applicable, as also have a great mass of Statutory Instruments. The book is divided into ten parts, one of which is devoted to the Metropolitan law, on which the authors speak with more than ordinary authority. They are both officers of the Metropolitan Water Board. There are also chapters dealing with river pollution, the safety of reservoirs and the Companies Acts.

The White Paper on Water Policy is included in this edition, but the present editors have dropped the Introductory Note. No doubt most of this will be found in the Notes to the sections, but there is much to be said for a general introduction, particularly when the law is partly contained in modern statutes and partly in those of the last century.

The book is expensive enough at six guineas, but it is well printed and laid out, well indexed and extremely comprehensive. It can fairly claim to present within its covers the law relating to water supply and on this basis it is good value for money.

Encyclopaedia of the Law of Planning, Compulsory Purchase and Compensation. Vol. 2. Compulsory Purchase and Compensation. By R. D. STEWART-BROWN, M.A., Barrister-at-Law. 1949. London: Sweet and Maxwell, Ltd. £6 16s. 6d. net, for two volumes.

The reviewer cannot help regretting the partnership which has sprung up between planning on the one hand and compulsory purchase and compensation on the other; this partnership has served to place much undeserved odium on the planner. The publishers have, however, ample statutory precedent for the combination of subjects in the Encyclopaedia, a combination which will undoubtedly be of convenience to solicitors.

Volume 2 of the Encyclopaedia covers compulsory purchase and compensation. It is particularly to be welcomed because these two subjects are apt to be treated separately, while the ancient, but none the less very important provisions of the Lands Clauses Consolidation Act, 1845, which lurk somewhere between the two, are often shrouded in obscurity; furthermore a substantial body of case law, mostly of the last century, has grown up, which is important for understanding the statutes. All the various parts which go to make up the whole are ably put together by Mr. Stewart-Brown in a general statement which constitutes Pt. I of the volume, which concludes with appendices tabling the numerous Acts conferring powers of compulsory purchase. Part II comprises annotated copies of the relevant Acts, while rules and orders and Ministerial circulars and information are to be found in the remaining two parts of the volume, which is completed with a substantial index. As in the case of its companion, the volume is in loose-leaf form, kept up to date by a supplemental service.

The Rent Acts. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Fifth Edition. 1950. London: Stevens & Sons, Ltd. 30s. net.

The author heaves a sigh at the necessity of annual re-writing imposed by new legislation and authority, but when he complains that such a task was never imposed on Hercules one is tempted to recall that the demi-god named was distinguished for brawn rather than brain. The reverse applies to qualifications necessary to anyone called upon to expound the law relating to rent control, the only point of comparison being, perhaps, that something superhuman is required. Mr. Megarry's latest effort can fairly be said to meet the requirement, as did his previous ones. The only actual innovation is the naming of judges when passages from judgments are quoted; but not only the passing of the Landlord and Tenant (Rent Control) Act, but the coming into being of 200 new decisions, have added both to the size and to the usefulness of the book. I hope it is not unkind to say that the profession look forward to the publication of a sixth edition; Mr. Megarry's observations on the somewhat dogmatic pronouncement made in *Brown* v. *Draper* [1944] K.B. 309 (C.A.), have recently found support in what was said—and decided—in *Middleton* v. *Baldock* [1950] 1 K.B. 657 (C.A.).

In his preface, Mr. Megarry cites the judgment of Scrutton, L.J., in *Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.), in which that learned lord justice expressed his regret that he could not order the costs to be paid by the draftsmen of the Rent Restrictions Acts, and the members of the Legislature who passed them, and were responsible for their obscurity. This preface, as was that to the fourth edition, is dated "Guy Fawkes Day," but the work is still dedicated to "the Draftsmen of the Acts with Awe and Affection . . ." Whether or not the correct inference is that our legislators are more to blame than are their servants or agents, it is perhaps as well to recall at times that obscurity may characterise common law and equity as well as rent control and other statute law. Part of the decision in the recent "Rent Act" case of *Solle* v. *Butcher* [1950] 1 K.B. 671 (C.A.), depended upon the true interpretation of *Bell* v. *Lever Bros., Ltd.* [1932] A.C. 161, which was itself a case in which no statutory provision of any kind played any part, but which was ultimately decided by a majority of three to two, allowing an appeal from a unanimous decision of the Court of Appeal, who had upheld that of the judge of first instance; and the last-mentioned later became a law lord.

The Law of Insurance. By the late SIDNEY PRESTON, of the Middle Temple, Barrister-at-Law, and RAOUL P. COLINVAUX, of Gray's Inn, Barrister-at-Law. Founded on the work by JAMES BIGGS PORTER. 1950. London: Sweet & Maxwell, Ltd. 45s. net.

This very comprehensive and up-to-date work on all branches of insurance, except marine, contains considerable new material, the result of patient research. There is much fresh information of great practical value, such as is contained, for example, in the section dealing with agency law. The law of agency is always regarded as full of difficulties and this is particularly so when it is applied to the business of insurance. But the authorities on the subject have been assembled, analysed and clearly explained. Very impressive, too, is the section dealing with life assurance law. The work will be found to be a most useful addition to the library of legal practitioners, students and insurance officials.

SURVEY OF THE WEEK

HOUSE OF COMMONS

QUESTIONS

Mr. CHUTER EDE stated that the number of men imprisoned for non-compliance with maintenance orders during the period 1939-49 was as follows: 1939—1,958; 1940—1,517; 1941—1,412; 1942—1,597; 1943—1,788; 1944—1,819; 1945—2,182; 1946—2,354; 1947—2,945; 1948—3,450; 1949—3,365. [15th Sept.

Mr. GAITSKELL said the normal practice was for an inspection of premises to be made before form C.V. 109 was issued by the Valuation Office denoting loss of development value. In some cases, however, there might be no inspection, as where the property had recently been inspected for some other purpose. [15th Sept.

Mr. RHODES stated that he was not yet in a position to say when it would be possible to introduce legislation making it compulsory for all furniture manufactured in this country to be stamped with the maker's name and address. [19th Sept.

Mr. SHINWELL said the recommendations of the Lewis Committee on Army and Air Force Courts-Martial and the Pilcher Committee on Naval Courts-Martial, which were conflicting in some respects and which raised a number of important and complicated issues, had now been considered by the Government and it had been decided that a Courts-Martial Court of Appeal should be set up for all three services and that the necessary legislation should be introduced next session. A further statement would be issued later covering many of the subsidiary recommendations of the Committees which depended, directly or indirectly, on the exact constitution and powers of the Appeal Court. Certain other recommendations of the Committees affecting courts-martial procedure were still under consideration. [19th Sept.

STATUTORY INSTRUMENTS

Draft **Borstal** (Scotland) Rules, 1950.

County Court Districts (Miscellaneous) No. 2 Order, 1950. (S.I. 1950 No. 1483.)

As to this order, see p. 616, *ante*.

Craighouse Pier Order, 1950. (S.I. 1950 No. 1515.)

Cutlery Wages Council (Great Britain) Wages Regulation Order, 1950. (S.I. 1950 No. 1538.)

Double Taxation Relief (Taxes on Income) (General) (No. 2) Regulations, 1950. (S.I. 1950 No. 1517.)

Eggs (Great Britain and Northern Ireland) (Amendment No. 8) Order, 1950. (S.I. 1950 No. 1547.)

Gas (Conversion Date) (No. 20) Order, 1950. (S.I. 1950 No. 1525.)

Import Duties (Exemptions) (No. 8) Order, 1950. (S.I. 1950 No. 1528.)

Import Duties (Exemptions) (No. 9) Order, 1950. (S.I. 1950 No. 1535.)

Iron and Steel Scrap Order, 1950. (S.I. 1950 No. 1523.)

London Traffic (Prescribed Routes) (No. 15) Regulations, 1950. (S.I. 1950 No. 1501.)

Meat (Rationing) (Amendment) Order, 1950. (S.I. 1950 No. 1534.)

North West Sussex Joint Water Order, 1950. (S.I. 1950 No. 1524.)

Retention of Pipes under Highway (Durham) (No. 1) Order, 1950. (S.I. 1950 No. 1529.)

Retention of Pipes under Highways (West Riding of Yorkshire) (No. 1) Order, 1950. (S.I. 1950 No. 1530.)

Stopping up of Highways (Oxfordshire) (No. 2) Order, 1950. (S.I. 1950 No. 1537.)

Superannuation (Transfers between the Civil Service and Public Boards) Rules, 1950. (S.I. 1950 No. 1539.)

Utility Apparel (Industrial Overalls and Merchant Navy Uniforms) (Manufacture and Supply) (No. 2) Order, 1950. (S.I. 1950 No. 1492.)

Utility Apparel (Maximum Prices and Charges) Order, 1949 (Amendment No. 11) Order, 1950. (S.I. 1950 No. 1518.)

Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 1521.)

Wisbech and District Water Board Order, 1950. (S.I. 1950 No. 1533.)

NOTES AND NEWS

Honours and Appointments

The King has been pleased, on the recommendation of the Lord Chancellor, to appoint Mr. GEOFFREY GLYNN BLACKLEDGE, O.B.E., M.C., K.C., to be presiding judge of the Court of Passage in the City of Liverpool.

Mr. R. BETTELY has been appointed clerk to Seaton Urban District Council with effect from 1st November. Mr. G. F. Garner, the present clerk, is to retire after nearly 50 years in local government service.

The following appointments are announced in the Colonial Legal Service: Mr. K. BECHGAARD, Crown Counsel, Aden, to be Assistant Legal Secretary, East Africa High Commission; Mr. J. H. M. DE COMARMOND, late Puisne Judge, Palestine, to be Senior Puisne Judge, Nigeria; Mr. S. W. P. FOSTER-SUTTON, Attorney-General, Federation of Malaya, to be Chief Justice, Federation of Malaya; Mr. C. G. X. HENRIQUES, Resident Magistrate, Jamaica, to be Attorney-General, British Honduras; Mr. G. C. LOW, Resident Magistrate, Uganda, to be Puisne Judge, Uganda; Mr. J. L. MATHIEU-PEREZ, Puisne Judge, Trinidad, to be Attorney-General, Trinidad; Mr. A. R. M. OSMAN, Additional Substitute Procureur General, Mauritius, to be Puisne Judge, Mauritius; Mr. B. W. L. ALLIN to be Deputy Registrar, Supreme Court, Kenya; Mr. W. R. COLE to be Assistant Land Officer, Lands and Mines Dept., Tanganyika; Mr. D. S. DAVIES to be Crown Counsel, Aden; Mr. M. L. DUNLOP to be Assistant Commissioner of Lands, Gold Coast; Mr. J. L. POOLE to be Assistant Commissioner of Lands, Gold Coast; and Mr. A. W. SKINNER to be Resident Magistrate, Nigeria.

Personal Notes

Miss Ailsa Jean Lees, solicitor, of Birkenhead, was married on 14th September to Mr. R. S. Dawson, assistant solicitor to Wallasey Corporation.

Miscellaneous

SPECIAL SERVICE AT WESTMINSTER ABBEY FOR THE OPENING OF THE LAW COURTS

On Monday, 2nd October, it being the first day of the Michaelmas law sittings, there will, as already announced, be a special service in Westminster Abbey at 11.45 a.m. Places will be reserved for Lords of Appeal, judges, official referees, county court judges, King's Counsel, officers of the Supreme Court and representative members of The Law Society. The Dean will receive the Lords of Appeal, judges, official referees, county court judges and the representative members of The Law Society, at the west door. The service will be over at 12.15 p.m.

King's Counsel, officers, and other judicial and official persons will enter by the west cloister door via Dean's Yard and cross to the north aisle, where those taking part will assemble in their legal precedence, so as to follow next after the judges and law officers in the procession to the choir. Members of the junior Bar will enter by Jerusalem Chamber, Dean's Yard.

The Lord Chancellor's reception at the House of Lords will take place at 12.30 p.m.

Two series of commentaries and discussions upon recent cases and current developments in common law and equity respectively will take place at the City of London College from 4 p.m. to 6 p.m. weekly, commencing, for common law, on 4th October, and, for equity, on 5th October, 1950.

The purpose of the commentaries is to provide a forum for discussion of and comment upon the practical aspects of recent case law and statutes, under the guidance of the law teaching staff of the college. The commentaries are under the direction of Mr. Clive M. Schmitthoff, LL.M., Barrister-at-Law.

The commentaries are intended for solicitors and their articled clerks and managing and assistant clerks and law students.

Members of the courses will receive in advance notice of the subject set down for discussion at every meeting.

The Worshipful Company of Solicitors of the City of London has offered a prize for competition among those attending the commentaries.

Further details and enrolment forms can be obtained on application to the Secretary, City of London College, Moorgate, E.C.2 (Monarch 8112–3–4).

SOCIETIES

The MANSFIELD LAW CLUB of the City of London College (President: Rt. Hon. Lord Justice Denning) announce the following programme of talks for the Michaelmas Term, 1950:

19th October: The Spirit of the British Constitution, by the Rt. Hon. Lord Justice Denning.

2nd November: Changing Features of English Law, by Mr. Clive M. Schmitthoff, LL.M., LL.D., Barrister-at-Law.

16th November: Developments in Accounting, by Mr. F. R. M. de Paula, O.B.E., F.C.A.

30th November: The Government of the City of London, by Mr. R. T. D. Stoneham, C.C.

14th December: Shipping Practice, by Mr. E. F. Stevens, M.I.Ex., A.I.C.S., A.C.C.S.

The meetings will be held at 6 p.m. in Room 1 at the City of London College, Moorgate, E.C.2.

Visitors are welcome at all meetings.

The LIVERPOOL LAW CLERKS SOCIETY announce the following syllabus of lectures for the session 1950–1951:—

1950

3rd, 10th and 17th October: Drafting of Contracts and Investigation of Title, by Professor J. Turner, LL.M.

24th October: Preparation of Cases for Magistrates' Court, by Mr. Brian Fraser-Harrison.

31st October: Husband and Wife, by Miss Rose Heilbron, K.C.

7th November: Estate Agents' Commission, by Mr. G. W. Guthrie-Jones, M.A., LL.B.

14th and 21st November: Practical Points in Drafting Documents, by Mr. Bertram B. Benas, B.A., LL.B.

28th November and 5th December: Employers' Liability to Workmen at Common Law, by Mr. J. Edward Jones, B.Comm., LL.B.

1951

9th and 16th January: County Court Practice, by Mr. J. Graeme Bryson, LL.M.

23rd January: Hospital Law, by Mr. N. Ryland, M.A.

30th January: Estate Duty, by Mr. F. Cruttenden.

6th February: Parent and Child, by Mr. A. C. Williams, B.A., LL.B.

13th February: Some Interesting Banking Cases, by Mr. N. E. Leach, A.I.B., A.C.I.S.

20th February: Town and Country Planning—Development Charges, by Mr. H. F. Sharman, A.R.C.I.

27th February: Roots of Title, by Mr. J. J. Rimmer.

6th March: Criminal Justice Act, 1948, by Mr. M. A. Reece.

13th March: The Working of the Legal Aid Act, 1949.

The lectures will be delivered at the Law Library, Tower Building, Water Street, Liverpool, commencing at 5.30 p.m.

Further particulars may be obtained from Mr. J. Hughes, Hon. Secretary, c/o Law Library.

OBITUARY

MR. J. A. DAVIS

Mr. John Albert Davis, solicitor, of London Bridge, Old Street, London, E.C.1, and Rottingdean, died on 20th September. He was admitted in 1913.

MR. C. EDWARDS

Mr. Charles Edwards, solicitor, formerly of Messrs. Soames, Edwards and Jones, of Norfolk Street, Strand, died on 17th September, aged 72.

MR. G. M. HOLLIS

Mr. George Mercer Hollis, solicitor, formerly of Richmond, Surrey, and Catford, died on 16th September. He was admitted in 1897.

MR. J. R. JOHNSON

Mr. John Richard Johnson, solicitor, of Preston and Blackpool, died on 13th September, aged 73. Admitted in 1900, he was twice president of Blackpool and Fylde District Law Society.

MR. H. ROBINSON

Mr. Henry Robinson, solicitor, formerly of Darlington, died on 20th September.

MR. C. R. RUTHERFORD

Mr. Charles Randall Rutherford, solicitor, formerly of Great Winchester Street, London, E.C.2, died on 20th September, aged 81. He was admitted in 1895.

MR. G. W. WEBBER

Mr. George William Webber, solicitor, of Bristol, died recently, aged 89. Admitted in 1888, he was president of the Bristol Law Society in 1920–21 and retired in 1945.

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